

SYSTEMIC VIOLATIONS OF ASYLUM-SEEKERS' HUMAN RIGHTS IN HUNGARY CONTINUES

Statement by the Hungarian Helsinki Committee to the OSCE HDIM 2019

The Hungarian Helsinki Committee (HHC) wishes to draw the attention of the Organisation for the Security and Cooperation in Europe (OSCE) to the systemic rights' violations committed against migrants in Hungary. These issues were already addressed during the 2018 HDIM by the HHC but as very little progress has been made and only in a limited number of areas, the need to bring these serious violations that already individually raise serious concerns is justified.

1. Extremely limited access to territory and procedure

The Hungarian government set up two transit zones at the Serbia-Hungarian border in September 2015 with the aim to control irregular migration. The practical operation of these zones, coupled with related legislative changes, limit access to the asylum procedure to the bare minimum since January 2018. Since that date, 1 applicant per working day per transit zone is allowed to enter the facilities to lodge their asylum application.

- "Legalization" of extrajudicial collective expulsion of migrants

Since 5 July 2016, third country nationals without the right to stay in Hungary are "escorted" to the external, Serbian side of the border fence built along the Hungarian-Serbian border¹. Those apprehended and then immediately pushed back have no right to seek asylum. There is no identification, consequently no documentation during these police measures. From 5 July 2016 until 28 March 2017, this rule was applicable only in an 8 km area from the border fence. During this period, a total of 11 269 individual escorts were carried out according to statistics provided by the Police. Since 28 March 2017, the 8 km area where such push-backs could be carried out have been extended to the entire territory of Hungary.² The number of such measures reached 26 500 by the end of August 2019. The "legalization" of extrajudicial push-backs is in breach of Hungary's international human rights obligations, and also poses serious security risks by collectively expelling individuals of unknown identity to the territory of another state.

- Legal changes of March 2017

Apart from the extension of the area from which third country nationals without the right to stay can be pushed back to Serbia, the amendments also prescribe that asylum applications can only be lodged in the two transit zones by third country nationals without the right to stay in Hungary.³ The admittance rate to the transit zones have been continuously reduced ever since their establishment: from a daily 100-100 to 1-1 on working days only in January 2018.

These two provisions, the "legalization" of extrajudicial push-backs; that asylum applications can only be lodged in the two transit zones; coupled with the reduction of admittance to these zones to 1 person per zone per working day reduced access to the Hungarian asylum system to a bare minimum.

¹ Section 5 (1a) of Act LXXXIX on State Borders, in force since 5 July 2016. See more: <https://www.helsinki.hu/en/hungary-latest-amendments-legalise-extrajudicial-push-back-of-asylum-seekers-in-violation-of-eu-and-international-law/>

² Section 5 (1b) of Act LXXXIX on State Borders, in force since 28 March 2017. See more: <https://www.helsinki.hu/wp-content/uploads/HHC-Info-Update-New-Asylum-Bill-15.02.2017.pdf>

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Section 80/J of Act LXXX of 2007 on Asylum (Asylum Act).

2. Lack of procedural safeguards

- Automatic, indefinite, and unlawful detention of asylum-seekers

As of 28 March 2017, all asylum-seekers with the sole exception of unaccompanied minors under 14 are automatically held in the transit zones by virtue of them lodging an asylum application for the entire duration of their asylum procedure.⁴ Transit zones are made up of metal containers, surrounded by barbed-wired fences and secured by police and military forces, and armed guards. Asylum-seekers can only leave the transit zones in the direction of Hungary if they are granted some form of protection. The zones also have a gate through which people can leave for Serbia: but by doing so, asylum-seekers automatically forfeit their asylum application and their ongoing asylum procedure is terminated.

As no detention order is issued to the asylum-seeker, no effective domestic judicial remedy is available against the de facto detention. The European Court of Human Rights in its chamber judgment of 14 March 2017 in the case of *Ilias and Ahmed v. Hungary* (application no. 47287/15) found, inter alia, that placement in the transit zone is in breach of Article 5 § 1 and 4 of the European Convention on Human Rights.⁵

As since 15 September 2015 courts can either uphold or annul the decision of the asylum authority but cannot change them, asylum procedures (and consequently, the unlawful detention in the transit zones) do not have a maximum time limit in practice. In the landmark case of *Torubarov v Bevándorlási és Menekültügyi Hivatal*⁶ the Court of Justice of the European Union decided that this does not meet the requirement of effective remedy. The judgement found that it is an obligation of a judge to change the decision of the asylum authority in cases where previous court decisions of the applicant were ignored by the authority. While this provides hope to many who are stuck in a game of ping-pong between the courts and the authority, it is unable to establish a clear theoretical deadline for the procedures.

- New ground for inadmissibility since 1 July 2018 in breach of EU regulations

A new inadmissibility ground, a hybrid of the concepts of safe third country and first country of asylum, is in effect since 1 July 2018. The new provision stems from amendments to the Fundamental Law⁷ and the Asylum Act⁸ but it was only put to practice in mid-August. This newly established inadmissibility ground is not compatible with current EU law as it arbitrarily mixes rules pertaining to inadmissibility based on the concept of the safe third country and that of the first country of asylum. The Recast Procedures Directive⁹ provides an exhaustive list of inadmissibility grounds¹⁰ which does not include such a hybrid form. That the new law is in breach of EU law is further attested by the European Commission's decision of 19 July 2018 to launch an infringement procedure concerning the recent amendments. According to the Commission, "the introduction of a new non-admissibility ground for asylum applications, not provided for by EU law, is a violation of the EU Asylum Procedures Directive. In addition, while EU law provides for the possibility to introduce non-admissibility grounds under the safe third country and the first country of asylum concepts, the new law and the constitutional amendment on asylum curtail the right to asylum in a way which is incompatible with the Asylum Qualifications Directive and the EU Charter of Fundamental Rights."¹¹ As the Commission did not find the Hungarian government's responses satisfactory, it decided to refer Hungary to the CJEU in July 2019 over these new provisions.¹²

The application of the new inadmissibility criterion means asylum claims are rejected and claimants become subject to alien policing procedures. Between 8 August 2018 and 30 August 2019, 27 adult asylum-seekers whose claims were found inadmissible based on the new provision were denied food in

⁴ Section 80/J (5) of the Asylum Act

⁵ *Ilias and Ahmed v. Hungary*, <http://hudoc.echr.coe.int/eng/?i=001-172091>

⁶ Case C-556/17

⁷ Amended Article XIV of the Fundamental Law

⁸ Newly introduced Section 51 (2) (f), and newly introduced 51 (12) of the Asylum Act

⁹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)

¹⁰ Article 33(2) of Directive 2003/32/EU

¹¹ European Commission Press Release: Migration and Asylum: Commission takes further steps in infringement procedures against Hungary, 19 July 2018. Available at: http://europa.eu/rapid/press-release_IP-18-4522_en.htm

¹² European Commission Press Release: Commission takes Hungary to Court, 25 July 2019, https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4260

the transit zones and the HHC had to request interim measures from the ECtHR in each case individually to ensure that people were not starved in detention.¹³ The European Commission decided to launch a new infringement procedure for withholding food from detainees in the transit zones in July 2019.¹⁴

3. Lack of state support for integration and assistance of beneficiaries of international protection

Amendments that entered into force on 1 June 2016 drastically curbed benefits provided to beneficiaries of international protection: the integration support scheme was terminated without replacing it with alternative measures; the maximum stay in open reception facilities following recognition was reduced from 60 to 30 days; and the eligibility period for free basic health care services was reduced from 1 year to 6 months.¹⁵ While civil society organisations tried to step up to fill in the resulting gaps in social integration assistance, their resources were limited. Access to facilities where asylum-seekers and beneficiaries of international protection are accommodated have been severely restricted in 2017.¹⁶ In January 2018, the Hungarian government withdrew the European Union's Asylum, Migration and Integration Fund's calls in 13 areas, many of them related to integration services, such as assistance to unaccompanied minors, psycho-social assistance, housing assistance, or trainings for professionals.¹⁷ Consequently, AMIF-funded crucial integration services provided to beneficiaries of international protection terminated in June 2018.¹⁸ Without any integration assistance beneficiaries of international protection face destitution and homelessness in Hungary.

RECOMMENDATIONS

We call on the Ad Hoc Committee on Migration of the OSCE PA to:

- Conduct a comprehensive monitoring visit to Hungary with an extended mandate that would include the observation of the situation of third country nationals pushed back from Hungary to Serbia, as well as the situation of asylum-seekers and beneficiaries of international protection in Hungary.

We call on the OSCE and OSCE Participating States to:

- Urge the Government of Hungary to fully comply with its Human Dimension commitments, including § 22 of the 1999 Istanbul Document on the rejection of mass expulsions and on the respect of the right to seek asylum, as well as § 38 of the 2003 Maastricht Document on counteraction of violence, intolerance, extremism and discrimination against asylum-seekers and on the respect of individual freedoms of asylum-seekers and migrants. Most notably, the government should be urged to (1) halt publicly financed xenophobic campaigns against asylum-seekers and migrants; (2) revoke legislation that allows the mass expulsion of third country nationals from Hungary; (3) respect the right to seek asylum, and (4) respect the right to liberty of asylum-seekers and ensure that detention is used only as a last resort and in accordance with Hungary's existing international obligations, especially in regard to effective remedy against formal detention orders;
- Urge the Government of Hungary to grant access to civil society organisations to open and closed facilities where asylum-seekers and migrants are accommodated or held in order to ensure that the provision of services and that human rights of asylum-seekers and migrants are

¹³ A summary of the implementation of the changes of 1 July 2018 is available here: <https://www.helsinki.hu/en/one-year-after/>
A regularly updated list of cases of denial of food is available here:

https://docs.google.com/spreadsheets/u/2/d/10V84xAVREKSScFwz4ME_2kfpBRV_CPqCr7SUKitE2o8/edit#gid=0

¹⁴ European Commission Press Release: Commission takes Hungary to Court, 25 July 2019,

https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4260

¹⁵ See in detail: <https://www.helsinki.hu/wp-content/uploads/HHC-Hungary-asylum-legal-amendments-Apr-June-2016.pdf>

¹⁶ See in detail: <https://www.helsinki.hu/wp-content/uploads/termination-of-agreements-summary.pdf>

¹⁷ <http://belugyialapok.hu/alapok/menekultugyi-migracios-es-integracios-alap/tajekoztatas-palyazati-kiirasok-visszavonasarol-20180124>

¹⁸ For a detailed list of available services, please consult HHC's Safety net torn-apart report: https://www.helsinki.hu/wp-content/uploads/SAFETY_NET.pdf

respected. Most notably, regular human rights monitoring of closed facilities, including the transit zones, must be resumed immediately;

- Urge the Government of Hungary to respect and fully implement the judgments and interim measures of the European Court of Human Rights;
- Urge the Government of Hungary to disclose its plans for integrating beneficiaries of international protection;
- Monitor the impact of legislation as well as other measures and related actions (including communication) by state actors and the media targeting asylum-seekers, beneficiaries of international protection, and civil society organisations assisting migrants in Hungary;